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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

NASSER ALLAHVERDI,

Cross-complainant and Respondent,

v.

SHAWN MONROE,

Cross-defendant and Appellant.

B205349

(Los Angeles County
Super. Ct. No. PC 040829)

APPEAL from an order of the Superior Court of Los Angeles County, Barbara M. Scheper, Judge. Affirmed.

Law Offices of Morse Mehrban and Morse Mehrban for Cross-defendant and Appellant.

No appearance for Cross-complainant and Respondent.

* * * * *

Respondent voluntarily dismissed a cross-complaint after appellant filed a special motion to strike the cross-complaint as a strategic lawsuit against public participation (SLAPP). (Code of Civ. Proc., § 425.16 et seq.)¹ The court granted appellant statutory attorney fees and costs under section 425.16, subdivision (c)² but awarded fees and costs in a reduced amount. Appellant appeals, contending the trial court abused its discretion in reducing his claimed fees and costs. We affirm.

FACTS AND PROCEDURAL HISTORY

Appellant filed this limited jurisdiction action against respondent for violation of civil rights. Appellant alleged he is wheelchair bound and needed to use the restroom at respondent's gas station. However, appellant stated he was unable to use the restroom at respondent's gas station because there was only one grab bar and appellant was unable to mount the toilet.

Respondent filed a cross-complaint against appellant and his counsel for violation of the unfair competition law (Bus. & Prof. Code, § 17200 et seq.) and declaratory relief. Respondent alleged appellant and his counsel preyed upon small businesses by filing numerous bad faith lawsuits and sought a declaration that appellant and his counsel were vexatious litigants.

Appellant filed a special motion to strike the cross-complaint as a SLAPP, and respondent voluntarily dismissed his cross-complaint. Appellant then moved for the attorney fees he incurred by bringing the special motion to strike. Appellant initially requested \$6,223 in fees and costs. He supported this request by the declaration of his

¹ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

² Section 425.16, subdivision (c) provides in pertinent part that "a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs."

counsel claiming he expended 27.3 hours with respect to the special motion to strike and stating his regular billing rate was \$250 per hour.³

The limited jurisdiction court determined it had no jurisdiction over a complaint for declaratory relief or a special motion to strike and ordered the case transferred to a court of unlimited jurisdiction. Appellant filed a supplemental request asking for an additional \$1,650 in fees plus \$39 in costs as a result of the case transfer or a total amended claim of \$7,737.⁴

The unlimited jurisdiction court granted the special motion to strike. The court stated the fact that respondent dismissed his cross-complaint did not divest the court of jurisdiction to make a finding on the merits of the special motion to strike or to award fees and costs. The court ruled appellant was engaged in protected activity when he filed his complaint, and respondent had failed to demonstrate a probability of success on the merits of his cross-complaint. The court found appellant and his attorney to be acting under a litigation privilege when they filed the underlying complaint (see § 47) and accordingly the cross-complaint would have been barred. The court did not credit respondent's claim that he dismissed the cross-complaint in order to return the matter to the limited jurisdiction court, stating it was his act in filing a cross-complaint, which contained requests for equitable relief, that had caused the action to be removed from the limited jurisdiction court. The court awarded appellant his attorney fees and costs incurred in bringing the special motion to strike. However, the court reduced the

³ The amount of costs claimed included filing and motion fees of \$80. Appellant also sought postage fees of \$22 and mileage of \$46.

Counsel's declaration indicated his claimed fees included such items as counsel's time to personally drive to the courthouse to file documents (a total of 5.2 hours at \$250 per hour) and time incurred to participate telephonically in a case management conference (0.7 hours at \$250 per hour for "telephonic hearing and waiting on hold"). Counsel later withdrew the request for fees for the case management conference.

⁴ The additional costs consisted of postage of \$7 and mileage of \$32.

amounts requested and awarded attorney fees of \$2,500 and costs of \$80, a total of \$2,580.

Appellant timely appealed from the award.

CONTENTIONS

Appellant claims the trial court abused its discretion in awarding appellant less than his requested \$7,737 in attorney fees and costs.⁵

DISCUSSION

The amount of statutory attorney fees to be awarded lies within the sound discretion of the trial court. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (*Drexler*)). “The “experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong[”]’ -- meaning that it abused its discretion.” (*Ibid.*, quoting *Serrano v. Priest* (1977) 20 Cal.3d 25, 49 & citing *Fed-Mart Corp. v. Pell Enterprises, Inc.* (1980) 111 Cal.App.3d 215, 228 [appellate court will interfere with determination of reasonable attorney fees “only where there has been a manifest abuse of discretion”].)

Although the fee setting inquiry in California ordinarily begins with the “lodestar,” i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate (*Drexler, supra*, 22 Cal.4th at p. 1095), there is no hard and fast rule delimiting factors justifying the exercise of judicial discretion to increase or decrease a lodestar calculation. (*Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 834 (*Thayer*)). “[O]ur Supreme

⁵ Respondent, who is not represented by counsel on appeal, has failed to file any brief. Though an appealing party has the duty to show error on appeal, a respondent has the corresponding duty to aid the appellate court in sustaining a judgment or order. (See 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 719, p. 787; *Goldstein v. Barak Construction* (2008) 164 Cal.App.4th 845, 849, fn. 1.) We may treat a respondent’s failure to file a brief as an acknowledgement that the appeal is well taken and reverse the trial court on such basis alone. (*Goldstein v. Barak Construction, supra*, at p. 849, fn. 1.; *Bennett v. California Custom Coach, Inc.* (1991) 234 Cal.App.3d 333, 338; see Cal. Rules of Court, rule 8.220(a)(2); Witkin, *supra*, Appeal, § 720, p. 788.) Nonetheless, we will address the merits of this case without respondent’s assistance.

Court has repeatedly observed that a lodestar figure may be adjusted not just upward but also, where appropriate, *downward*.” (*Id.* at p. 840 [finding negative lodestar justified], citing *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134 (*Ketchum*) & *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1294.)

The lodestar should be calculated by “the number of hours *reasonably* expended multiplied by the reasonable hourly rate.” (*Drexler, supra*, 22 Cal.4th at p. 1095, italics added; *Ketchum, supra*, 24 Cal.4th at p. 1134; *Thayer, supra*, 92 Cal.App.4th at p. 844.) The court in the present instance considered the lodestar amount, inasmuch as appellant presented his claim in that form. It is evident the trial court believed the lodestar figure should be adjusted to account for the number of hours it considered were *reasonably* expended by counsel for appellant because some of the claims were not adequately justified.⁶

Viewing the claimed fees and costs as a whole, the court decided \$2,500 in attorney fees and \$80 in costs were “reasonably expended” and appropriate. That determination was well within the court’s discretion. “[T]he predicate of *any* attorney fee award . . . is the necessity and usefulness of the conduct for which compensation is sought.” (*Thayer, supra*, 92 Cal.App.4th at p. 846; see also *EnPalm, LLC v. Teitler* (2008) 162 Cal.App.4th 770, 774, 777-778 [lodestar reduced by 90%].) The court below observed several duplicative entries and noted a number of the items lacked an adequate showing of necessity. An adjustment for such discrepancies was within the court’s prerogative. If a fee request looks unreasonably inflated, the trial court has discretion to

⁶ For example, the court indicated an award for postage and mileage was inappropriate under statutory authority and the claim for some other expenses was “too vague.” (E.g., § 1033.5, subd. (b)(3) [postage, telephone and photocopying charges, except for exhibits, not allowable as costs except when expressly authorized by statute]; § 1033.5, subd. (c)(4) [items not mentioned in § 1033.5 and items assessed upon application may be allowed or denied “in the court’s discretion”].) The court cited multiple charges for “reviewing the court order re transfer” questioning the relevancy of a transfer order to a special motion to strike. The court also questioned entries for traveling to an appearance and for rescheduling a motion finding the explanation for such claims to be insufficient.

reduce the award or even to deny it altogether. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 635; *Meister v. Regents of University of California* (1998) 67 Cal.App.4th 437, 447-448.)

Appellant has shown no abuse of discretion in the court's awarding of attorney fees and costs.⁷

DISPOSITION

The order is affirmed. Respondent is to recover costs on appeal.

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FLIER, J.

We concur:

RUBIN, Acting P. J.

BIGELOW, J.

⁷ Our affirmance of the trial court's exercise of discretion is not, as appellant asserts, a matter of "letting a trial court do whatever it feels like" but an adherence to traditional notions of jurisprudence. (9 Witkin, Cal. Procedure, *supra*, Appeal, § 362, p. 418.)